bring assumpsit for the value of the property on the wrongdoer's implied contract to pay for the property converted by him.

[Ed. Note.—For cases in point, see vol. 1, Cent. Dig. Action, § 198.]

2. Set-Off—Actions of Contract—Claims for Conversion.—Under Va. Code 1904, § 3298, providing that in a suit for debt defendant may prove any payment or set-off, defendant in an action of assumpsit may set off a claim for the conversion of his property by plaintiff.

[Ed. Note.—For cases in point, see vol. 43, Cent. Dig. Set-Off and Counterclaim, §§ 16, 32.]

3. Pleading—Statement of Defense—Sufficiency.—Under Code 1887, § 3249 [Va. Code 1904, p. 1709], authorizing the court to order a statement of the particulars of the claim or the ground of defense to be filed, the statement need not set out the particulars of the claim or the ground of defense with the formality or precision of a declaration or plea, but only in such manner as to notify the adverse party of its character, and an itemized account of goods claimed by defendant to have been converted by plaintiff is a sufficient statement of defense under a plea of set-off.

[Ed. Note.—For cases in point, see vol. 39, Cent. Dig. Pleading, § 293.]

EASTERN STATE HOSPITAL *v.* GRAVES' COMMITTEE.

March 1, 1906.

[52 S. E. 837.]

1. Limitations of Actions—Claims of State.—Unless the statute expressly so provides, limitations do not run against the state, either as to debts and demands of a personal nature in favor of the state or as to real estate held by it.

[Ed. Note.—For cases in point, see vol. 33, Cent. Dig. Limitation of Actions, § 36.]

2. Same—Actions in Name of State.—Where a suit is brought in the name of the state, but the state has no real interest in the litigation, and its name is being used merely to enforce a right in favor of an individual or corporation, the defense of laches or limitations may be made.

[Ed. Note.—For cases in point, see vol. 33, Cent. Dig. Limitation of Actions, § 36.]

3. Same—Actions for State.—Where a suit is brought for the sole benefit of the state, the defense of limitations can not be made, although the suit is not brought in the name of the state.

[Ed. Note.—For cases in point, see vol. 33, Cent. Dig. Limitation of Actions, § 36.]

4. Parties — Real Party in Interest — Determination.—The courts will determine who is the real party in interest in an action by refer-

ence, not merely to the name in which the action is brought, but to the facts as they appear of record.

5. Limitation of Actions—Action by State Agency.—Where an insane hospital is created for purely governmental purposes, is controlled by the state, having no stockholders or members, except directors appointed by the Governor, and any loss resulting from its failure to collect charges imposed upon its inmates or their estates is borne by the state, and any recovery of such charges is for the benefit of the state, an action by the hospital to recover for charges in taking care of an insane person cannot be barred by limitations.

TOWN OF PHŒBUS *v.* MANHATTAN SOCIAL CLUB.

March 1, 1906.

[52 S. E. 839.]

1. Licenses—Recovery of Taxes Paid—Actions.—In order to entitle a party to maintain an action to recover back a license tax paid by it to a town, it must be shown that the town had no authority to impose the tax, that it actually received the money paid, and that the payment was not made voluntarily.

[Ed. Note.—For cases in point, see vol. 32, Cent. Dig. Licenses, § 68.]

2. Municipal Corporations — Taxation—Exemptions.—Acts 1902-03-04, pp. 155, 226, c. 148, cl. 144, providing that any social club which shall desire to keep liquors on sale at its clubhouse shall pay to the treasurer of the county or corporation in which the clubhouse is situated $2 for every person who is a member of the club in lieu of all other taxes for selling liquor to its members, does not exempt social clubs from municipal taxation.

3. Licenses—Taxes on Clubs.—The tax imposed on social clubs by Acts 1902-03-04, pp. 155, 226, c. 148, cl. 144, requiring social clubs which keep liquors on sale to pay $2 for every member of the club in lieu of all other taxes, is, in view of the provisions of the statute looking to the regulation of such clubs, requiring them to make reports as to their membership, officers, dues, etc., and providing for a forfeiture of their charters for failure to make such reports, a license tax within the meaning of Code 1904, § 1042, authorizing a city or town to impose a tax in addition to the state tax for the privilege of doing anything for which a "license tax" is required within the city or town, and consequently an additional tax may be imposed by the town in which the club is located.

4. Taxation — Recovery of Taxes Paid — Burden of Proof.—Payment of taxes is presumed to be voluntary, and the burden is upon